

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX pertaining to	)	PROPOSED ADOPTION
mental health center services for	)	
youth with serious emotional	)	
disturbance (SED)	)	

TO: All Concerned Persons

1. On January 14, 2009, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 5, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH  
SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS For purposes of this  
subchapter, the following definitions apply:

(1) "Community-based psychiatric rehabilitation and support (CBPRS)" means rehabilitation services provided in home, school, and community settings for youth with serious emotional disturbance. Services are provided by trained mental health personnel under the supervision of a licensed mental health professional and according to a rehabilitation plan.

(2) "Comprehensive school and community treatment" is defined in ARM 37.86.2224.

(3) "In-training mental health professional services" are services provided under the supervision of a licensed mental health professional by an individual who has completed all academic requirements for licensure as a psychologist, clinical social worker, or licensed professional counselor and is in the process of completing the supervised experience requirement for licensure.

(4) "Licensed mental health center" is defined in ARM 37.87.102. For purposes of this subchapter the following provisions also apply:

(a) For a mental health center to be licensed, there are specific services that must be provided to its clients in accordance with ARM 37.106.1906.

(b) A mental health center may provide other appropriate services with an endorsement by the department in accordance with ARM 37.106.1906.

(5) "Mental health center services for youth with serious emotional disturbance" reimbursed by Medicaid means community-based psychiatric rehabilitation and support services, comprehensive school and community treatment programs, day treatment services, in-training mental health professional services, outpatient therapy services, mental health professional services, and targeted case management services.

(6) "Mental health professional" is defined in ARM 37.87.102.

(7) "Outpatient therapy service" is defined in ARM 37.87.102.

(8) "Serious emotional disturbance (SED)" criteria are defined in ARM 37.87.303.

(9) "Treatment day" means a calendar day, including night, daytime, or evening, during which a youth receives services according to applicable requirements.

(10) "Youth" is defined in ARM 37.87.102.

(11) "Youth day treatment" means a program which provides, in accordance with mental health center license requirements, an integrated set of mental health, education, and family intervention services to youth with serious emotional disturbance.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

## RULE II MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS

(1) These requirements are in addition to those rule provisions generally applicable to Medicaid providers.

(2) Mental health center services may be provided only by a facility which is licensed as a mental health center defined in ARM 37.87.102.

(3) Provider requirements contained in ARM 37.88.905 are incorporated and referenced for mental health center services for youth with serious emotional disturbance.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

## RULE III MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, COVERED SERVICES (1) Mental health center services for youth with serious emotional disturbance include:

(a) Community-based psychiatric rehabilitation and support services:

(i) are provided on a face-to-face basis primarily with a youth, or on a face-to-face basis with family members, teachers, employers, or other key individuals in the youth's life when such contacts are clearly necessary to meet goals established in the youth's individual rehabilitation treatment plan;

- (ii) have as their purpose:
  - (A) the maximum attainment of mental functioning;
  - (B) the minimization or elimination of deterioration in mental functional status;

and

- (C) the maintenance of mental health functional status of a youth.
- (iii) must be prior authorized by the department or its designee to be provided in comprehensive school and community treatment programs, day treatment, partial hospitalization, therapeutic group home facilities, therapeutic foster homes, therapeutic family homes, or other residential facilities in accordance with all of the following:

- (A) youth with extraordinary behavioral needs whose behaviors have not resulted in criminal or status offenses may be eligible for community-based psychiatric rehabilitation and support;

- (B) proposed services must be reviewed on a case-by-case basis by the department or its designee to determine the medical necessity and number of units authorized as defined in (1)(a)(ii); and

- (C) sufficient documentation supporting the medical necessity for the additional services must be provided by the requestor.

- (iv) excludes the following services except as provided in (1)(a)(iii):

- (A) interventions provided in a hospital, skilled nursing facility, intermediate nursing facility, or psychiatric residential treatment facility;

- (B) case planning activities, including but not limited to, attending meetings, completing paperwork and other documentation requirements, and traveling to and from the youth's home, or other location;

- (C) therapeutic interventions by licensed mental health professionals, regardless of the location of the service;

- (D) activities that are purely recreational in nature;

- (E) services provided within the school classroom that are educational, including but not limited to educational aides;

- (F) habilitation services; and

- (G) services within day treatment, therapeutic group home, therapeutic foster home, therapeutic family home, or other residential facilities solely for the purpose of staff safety.

- (b) Comprehensive school and community treatment in accordance with ARM 37.86.2224.

- (c) Youth day treatment services as defined in [RULE I].

- (d) In-training mental health professional services as defined in [RULE I]. Such services must be supervised by a licensed mental health professional in the same field, and, other than licensure, the services are subject to the same requirements that apply to licensed mental health professionals.

- (e) Outpatient therapy services such as:

- (i) psychotherapy and related services provided by a mental health professional acting within the scope of the professional's license; and

- (ii) family therapy, if medically necessary for the treatment of the Medicaid eligible youth who is involved in the family therapy:

- (A) family therapy may be provided with or without the Medicaid eligible youth present.

(B) adequate documentation must be present to document the direct benefit to the Medicaid eligible youth in accordance with the treatment plan;

(C) individual and family therapy are targeted at reducing or eliminating symptoms or behaviors related to a youth's mental health diagnosis as specified in the treatment plan;

(D) the mental health professional is required to develop and implement a treatment plan for the youth and family; and

(E) individual therapy includes diagnostic interviews where testing instruments are not used.

(f) Targeted case management services in accordance with Title 37, chapter 86, subchapter 37.

(g) Mental health professional services provided according to mental health center licensing requirements as part of mental health center services.

(i) To the extent otherwise permitted by applicable Medicaid rules, such mental health professional services may be billed by the mental health center either as mental health center services or by the mental health professional under the applicable Medicaid category of service, but may not be billed as both mental health center services and mental health professional services.

(ii) Mental health professional services may be covered and reimbursed by Medicaid only if the mental health professional is enrolled as a provider and the services are provided according to the Medicaid rules and requirements applicable to the mental health professional's category of service and within the scope of practice, including but not limited to medication management.

(iii) Mental health center services covered by the Medicaid program include the medical director component of a physician's services to a mental health center, but do not include the professional component of physician services covered in ARM 37.86.101, 37.86.104, and 37.86.105. The professional component of physician services may be billed according to the provisions of (1)(g)(i) or ARM 37.86.101, 37.86.104, and 37.86.105.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

#### RULE IV. MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NONCOVERED SERVICES

(1) Mental health professional services, provided in a hospital on an inpatient basis, that are covered by Medicaid as part of the diagnosis related group (DRG) payment under ARM 37.86.2907 are not reimbursable as mental health center services. These noncovered services include:

(a) mental health professional services provided by mental health professionals who are staff members of a mental health center which has a contract with a hospital involving consideration;

(b) services provided for purposes of discharge planning as required by 42 CFR part 482.43; and

(c) services including but not limited to group therapy that are required as a part of hospital licensure or certification.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE V MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH  
SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT

(1) Medicaid reimbursement for mental health center services shall be the lowest of:

- (a) the provider's actual (submitted) charge for the service; or
- (b) the rate established in the Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207.

(2) For day treatment services, Medicaid will not reimburse a mental health center provider for more than one fee per treatment day per youth. This does not apply to mental health professional services to the extent such services are separately billed in accordance with these rules or targeted case management services for youth with serious emotional disturbance.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE VI MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS  
EMOTIONAL DISTURBANCE (SED) RESPITE CARE SERVICES, DEFINITION

For purposes of this subchapter, the following definitions apply:

- (1) "Respite care" means relief services that allow family members, who are regular care givers of a youth with a serious emotional disturbance (SED), to be relieved of their care giver responsibilities for a temporary, short-term period.
- (2) "SED" criteria are defined in ARM 37.87.303.
- (3) "Youth" is defined in ARM 37.87.102.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE VII MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS  
EMOTIONAL DISTURBANCE (SED) RESPITE CARE SERVICES, LIMITATIONS

- (1) Respite care services may be provided only on a short term basis, such as part of a day, weekends, or vacation periods.
- (2) Respite care services may be provided in a youth's place of residence or through placement in another private residence or other related community setting, excluding psychiatric residential treatment facilities.
- (3) Respite care services are limited to available funding each state fiscal year.
  - (a) Retroactive funds for respite care services are not available.
- (4) Youth must meet SED criteria and must also be receiving Medicaid funded mental health services.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE VIII MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS

EMOTIONAL DISTURBANCE (SED) RESPITE CARE SERVICES, PROVIDER PARTICIPATION

(1) Licensed and enrolled mental health centers may provide respite care services upon approval of enrollment and according to the written provider agreement between the provider and the department and the requirements of this subchapter.

(2) The provisions of ARM 37.85.402 shall apply for purposes of provider enrollment. Providers must enroll with the department's Medicaid fiscal agent in the same manner and according to the same requirements applicable under the Montana Medicaid program. The department may accept current Medicaid enrollment for purposes of enrollment, if the provider agrees, in a form acceptable to the department, to be bound by applicable requirements.

(3) For purposes of enrollment, providers must be and remain enrolled in the Montana Medicaid program for the same category of service and must meet the same qualifications and requirements that apply to the provider's category of service under the Montana Medicaid program.

(4) All providers of mental health services must maintain records which fully demonstrate the extent, nature, and medical necessity of services provided to youth with SED. These records must be retained for a period of at least six years and three months from the date of service in accordance with ARM 37.85.414.

(5) The provider of respite care services must ensure that its employees providing the services are:

- (a) physically and mentally qualified to provide this service to the youth;
- (b) aware of emergency assistance systems and crisis plans;
- (c) knowledgeable of the physical and mental conditions of the youth;
- (d) knowledgeable of common medications and related conditions of the youth; and
- (e) capable of administering basic first aid.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE IX MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) RESPITE CARE SERVICES, PROVIDER

REIMBURSEMENT (1) Respite care services are non-Medicaid funded services except for youth with SED enrolled in the Psychiatric Residential Treatment Facility Waiver in accordance with ARM 37.87.1303 through 37.87.1343.

(2) Providers' claims for respite care services provided to youth with SED must be submitted to the department's Medicaid Management Information System (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's MMIS contractor.

(3) Reimbursement for respite care services is as provided in Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule, as adopted in ARM 37.86.2207.

(4) Providers of respite care services must accept the amounts payable under this rule as payment in full for the respite care services provided to youth with SED.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. The Department of Public Health and Human Services (department) is proposing new Rules I through V for mental health center services for youth with SED as part of the reorganization of the mental health rules for youth with SED. This is part of the department's effort to separate rules providing for youth mental health services from those for adult mental health services. The proposed new rules are necessary to improve the administration of mental health center services for youth that are complicated by ambiguous rules related to covered services and eligibility. The department took this opportunity to edit and punctuate the mental health center services rules to make them easier to read and interpret. The proposed rules will not increase or decrease provider reimbursement or recipient benefits.

The department is also proposing new Rules VI through IX for respite care services provided to youth with SED. Respite care services are reimbursed by non-Medicaid funds. Mental health centers are currently the providers of the services. These new rules would govern respite services, limitations, provider participation, and reimbursement.

#### RULE I

Proposed new Rule I would include the definitions pertaining solely to mental health center services. Many of the definitions currently found in the existing mental health center rules that are combined for youth and adults have been included in this proposed new rule. The department's alternative to the proposed changes was to leave the mental health center rules for adults and youth in one chapter of the rules. The department did not choose this alternative because it is currently difficult for consumers and providers to locate rules for youth with SED. Department staff will more readily be able to maintain the rule set and maintain federal and state compliances should requirements change.

#### RULE II

Proposed new Rule II would contain requirements mental health centers must meet to provide services to Montana Medicaid eligible youth with SED. To avoid redundancy, the department proposes to incorporate by reference those provider requirements contained in ARM 37.88.905.

#### RULE III

The department proposes this new rule to outline the covered services provided by a mental health center to Medicaid eligible youth with SED. The proposed rule would define community-based psychiatric rehabilitation and support services (CBPRS) and would contain criteria for when these services may be prior authorized by the department or its designee in certain situations. In addition, many of the services

currently in the existing mental health center rules that are combined for youth and adults have been included in this new proposed rule.

#### RULE IV

The department is proposing new Rule IV to list those services that are not reimbursable under Montana Medicaid. This language is based on ARM 37.88.906 that is combined for youth and adults. No additional noncovered services would be added.

#### RULE V

Proposed reimbursement for mental health center services to youth with SED in new Rule V would be applicable to youth with SED and similar to the current language in the existing ARM 37.88.907 that is combined for youth and adults. The proposed rule for day treatment services would specify that Medicaid will not reimburse a mental health center provider for more than one fee per treatment day per youth. This would not apply to mental health professional services to the extent that such services are separately billed in accordance with these rules or targeted case management rules for youth with SED.

#### RULE VI

The department is proposing new Rule VI to describe respite care services as relief services that would allow family members who are regular care-givers of the youth with SED to be relieved temporarily of their care giver responsibilities.

#### RULE VII

The department is proposing new Rule VII to assist providers, consumers, and advocates in understanding the limitations of non-Medicaid funded respite care services. The services would be limited to available funding per each state fiscal year and the youth with SED must currently be receiving Medicaid funded mental health services. Funding for these services is limited and the department wishes to make clear that they are not an entitlement.

#### RULE VIII

The department is proposing new Rule VIII to help mental health centers clearly understand their requirements as respite care service providers. The provider must be a licensed mental health center and be enrolled as a Medicaid provider through our fiscal agent even though reimbursement comes entirely from state funds. The provider must maintain records fully demonstrating the extent, nature, and medical necessity of respite care services provided to youth with SED. The provider must ensure that its employees providing respite services are physically and mentally qualified to provide this service to the youth, are aware of emergency assistance systems and crisis plans, are knowledgeable of the physical and mental conditions



of the youth, knowledgeable of common medications and related conditions of the youth, and capable of administering basic first aid.

### Rule IX

The department is proposing new Rule IX to specify that respite care services are non-Medicaid funded services and are paid through the department's MMIS contractor. The respite care service code is included on the fee schedule for Medicaid Mental Health and Mental Health Services Plan for Individuals under 18 years of age. Reimbursement is considered payment in full and a respite care provider who accepts reimbursement by the state under this rule may not bill others for any part of the service.

### Persons and entities affected

In state fiscal year (SFY) 2008, there were ten mental health centers providing respite care services and 572 youth receiving respite services yearly in the state of Montana. All could be affected by the proposed changes.

### Fiscal and benefit effects

The department does not expect the proposed new rules to increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected because the proposed rules are intended to reorganize and clarify rules for existing services. In SFY 2008, the department paid \$353,562.61 for respite care services.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., January 22, 2009.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ John Koch  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Acting Director  
Public Health and Human Services

Certified to the Secretary of State December 15, 2008.